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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 PAULA DONALD, on behalf of herself, all
17 others similarly situated, and the general
18 public,

19 Plaintiff,

20 vs.

21 XANITOS, INC., a Delaware corporation,
22 KAISER FOUNDATION HOSPITALS, a
23 California corporation, and DOES 1 through
24 10, inclusive,

25 Defendant.

CASE NO.: 3:14-CV-05416-WHO

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

ORDER

1
2 Before the Court is the Plaintiff’s Motion for Preliminary Approval of Class Action
3 Settlement (“Motion”) (Dkt. No. 63) and the pertinent materials filed with that motion, the
4 supplemental briefing (Dkt. No. 67) and response to order to show cause (Dkt. No. 72). The
5 papers filed with the response satisfied the Court’s questions concerning the settlement and, for
6 good cause shown, and as more fully explained below, the Motion is GRANTED. The hearing
7 scheduled for December 14, 2016 is VACATED.

8 The Court ORDERS as follows:

9
10 1. **Preliminary Certification of the Settlement Class.** For the purposes of
11 settlement only, the Court preliminarily finds that the proposed Class, as defined in the
12 Stipulation and Agreement to Settle Putative Class Action between the Parties and Addendum
13 thereto (collectively, the “Settlement Agreement”), meets the requirements of Rule 23(a) and
14 Rule 23(b)(3) of the Federal Rules of Civil Procedure. Accordingly, the Court certifies for
15 settlement purposes only the following proposed California Rule 23 Classes:

16 (1) All persons who provided environmental services to Defendants
17 within the State of California as a contractor for Xanitos, and who
Xanitos classified as an independent contractor; and

18 (2) All persons who provided environmental services to Defendants
19 within the State of California as a supervisor, manager or similar or
20 equivalent designation, as an employee of Xanitos, and who Xanitos
classified as an exempt employee.

21 Not later than fifteen (15) days after the date of this Order, Defendant will provide the
22 Claims Administrator with a list of the names and last known addresses and phone numbers of
23 the Class, including their dates of employment.

24 2. **Nullification.** This Order will be null and void and of no force or effect, and this
25 action will proceed as though a class had never been certified, if the Settlement Agreement is not
26 finally approved by the Court or if the Settlement Agreement, after being finally approved by the
27

1 Court, is invalidated on appeal or terminated pursuant to its own terms.

2 3. **Class Representative.** The Court grants approval to the Named Plaintiff Paula
3 Donald to serve as Class Representative with respect to the settlement.

4 4. **Class Counsel.** The Court appoints as Class Counsel for the Settlement Class
5 Leonard T. Emma, Michael R. Hoffman, and Stephen Noel Ilg, of the law firm of Hoffman
6 Employment Lawyers (580 California St., Suite 1600, San Francisco, CA 94104).

7 5. **Preliminary Approval of the Agreement.** The proposed settlement set forth in
8 the Settlement Agreement appears, upon preliminary review, to be fair, reasonable and adequate
9 and is therefore preliminarily approved subject to further consideration thereof at the Final
10 Approval Hearing, as provided in Paragraph 7 below. It is found that the Notice of the proposed
11 Settlement should be given as provided in the Agreement and set forth in Paragraph 8 below.

12 6. **Claims Administrator.** Simpluris, Inc. is approved as the Claims Administrator
13 of the settlement as set forth in the Agreement.

14 7. **Fairness Hearing.** Under Rule 23(e) of the Federal Rules of Civil Procedure, a
15 Fairness Hearing will be held on March 29, 2017 at 2:00 p.m. to consider final approval of the
16 Agreement.¹ The date and time of the Final Approval Hearing shall be set forth in the Notice, but
17 the Final Approval Hearing shall be subject to adjournment by the Court without further notice
18 to the Class Members other than that which may be posted by the Court.

19 8. **Notice to the Class.** The Notice of Proposed Settlement of Class Action Lawsuit
20 and Fairness Hearing (the "Notice") attached as Exhibit A to the Addendum to Settlement
21 Agreement is approved. The Court orders that the Claims Administrator mail the Notice as set
22 forth in the Settlement Agreement to the members of the Class.

23 9. **Exclusion from the Settlement.** Any member of the Class who wishes to not
24

25 _____
26 ¹ The parties may file a stipulation and proposed order suggesting a different date for the fairness hearing within the
27 next week in the event the date chosen by the Court is inconvenient for the parties or Claims Administrator.

1 14. **Voiding the Agreement.** Pursuant to the Settlement Agreement, if ten percent
2 (10%) or more of the members of the Class elect to be excluded from the Class, Defendant will
3 have the right, in its sole discretion, to void this Settlement Agreement by serving a written
4 notice on Class Counsel as set forth in the Settlement Agreement. If Defendant serves a timely
5 notice, then the Settlement Agreement becomes null and void and this action will resume as it
6 existed immediately prior to the execution of the Settlement Agreement.


7 15. **Order for Settlement Purposes.** The findings and rulings in this Order are made
8 for the purposes of settlement only and may not be cited or otherwise used to support the
9 certification of any contested class or subclass in this action or any other action.

10 16. **Stay.** All proceedings in this action, other than such proceedings as may be
11 necessary to carry out the terms and conditions of the Settlement Agreement, are stayed and
12 suspended until further order of the Court.

13 17. **Use of Agreement and Ancillary Terms.** Neither the Settlement Agreement
14 (whether or not it is finally approved) nor any ancillary documents, actions, statements, or filings
15 in furtherance of settlement (including matters associated with the mediation) will be admissible
16 or offered into evidence in any action related or similar to this one for the purposes of
17 establishing, supporting or defending against any claims that were raised or could have been
18 raised in this action or are similar to such claims.

19
20
21 **IT IS SO ORDERED.**

22 Dated: December 9, 2016

23 
24 _____
25 WILLIAM H. ORRICK
26 UNITED STATES DISTRICT COURT JUDGE